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Supreme Court, U.S.
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No. 02-651

In the Supreme Court of the United States

JOE JOHN RODRIGUEZ,

Petitioner,

v.

WAYNE W. FARRELL AND LOIS SZCZEPANSKI,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTIONS PRESENTED FOR REVIEW

I. Did The Eleventh Circuit Correctly Hold That Sgt. Farrell Did Not Use Excessive Force When He Handcuffed Petitioner?

A. Is Handcuffing A Suspect Behind His Back And Raising His Arms In A Compliance Technique Excessive If The Handcuffing Causes Serious Injury To The Suspect's Arm, Due to The Suspect's Pre-Existing Elbow Sugery, Where The Arresting Officer Does Not Know About The Pre-Existing Injury Prior To Handcuffing The Suspect?

B. Is It Excessive Force For The Officers To Leave A Suspect's Handcuffs On For 15 Minutes After The Arrest, Until The Suspect Arrives At The Police Station, Where The Arresting Officer Does Not Know About The Suspect's Pre - Existing Elbow Surgery?

C. Does The Opinion Below Conflict With Decisions Of Other Courts of Appeal?

II. Did The Eleventh Circuit Correctly Hold That Sgt. Farrell Is Entitled To Qualified Immunity?

A. Is The Law Sufficiently Clearly Established, So As To Defeat An Officer's Claim Of Qualified

Immunity, That Handcuffing A Suspect Behind His Back And Raising his Arms In A Compliance Technique Is Excessive Force Where The Handcuffing Causes Serious Injury To The Suspect's Arm, Due To The Suspect's Pre-Existing Elbow Injury, If The Arresting Officer Did Not Know About The Pre-Existing Elbow Surgery Prior To Handcuffing The Suspect?

B. Would Every Reasonable Police Officer Inevitably Conclude That Handcuffing A Suspect Behind His Back And Raising His Arms In A Compliance Technique Was Excessive Where The Handcuffing Causes Serious Injury To The Suspect's Arm, Due to The Suspect's Pre-Existing Injury, If The Arresting Officer Does Not Know About The Pre-Existing Elbow Surgery Prior To Handcuffing The Suspect?

C. Is The Law So Clearly Established, Sufficient To Defeat An Officer's Claim Of Qualified Immunity, That An Arresting Officer Uses Excessive Force By Leaving a Suspect's Handcuffs On For 15 Minutes After The Arrest, Until The Suspect Is Transported To The Police Station, If The Arresting Officer Does Not Know About The Suspect's Pre-Existing Elbow Surgery?

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STATEMENT OF THE RELEVANT FACTS

"On September 8 1995 at 12:10 a.m., Officer [Lori] Szczepanski ('Officer Szczepanski') pulled over a vehicle driven by Patricia Foulkes ('Ms. Foulkes'): the vehicle had a broken tag light. [Petitioner Joe John] Rodriguez ['Rodriguez'] was the only passenger in Ms. Foulkes's car. Shortly after the initial traffic stop, Sgt. [Wayne] Farrell ['Sgt. Farrell'] arrived to provide backup." *Rodriguez v. Farrell*, 280 F.3d 1341, 1343 (11th Cir. 2002), *rehearing denied*, 294 F.3d 1276 (11th Cir. 2002); *See* Pet. App. A at 15. Contrary to Petitioner's Statement of Relevant Facts, these officers did not have other backups or another canine officer at the scene. App. B at 3a (Deposition of Sgt. Farrell at 5; Sgt. Farell was the only backup); App. C at 11a-13a (Deposition of Officer Szczepanski at 9; 60) (Officer Szczepanski, who had arrested the driver, was a canine officer; Sgt. Farrell was her only backup).

"Officer Szczepanski directed Rodriguez to get out of the vehicle. Rodriguez complied and walked around freely beside the vehicle. But, before Rodriguez got out of the vehicle, he removed his sling. Because Rodriguez was wearing a long-sleeve shirt (after he had removed his sling), nothing outwardly indicated that Rodriguez's arm was injured." *Rodriguez* , 280 F.3d at 1343; *See* Pet. App. A at 15; App. B at 3a-4a (Deposition of Sgt. Farrell at 16); App. D at 26a-28a (Deposition of Petitioner at 280-281). Officer Szczepanski then turned her attention to Ms. Foulkes, whom she arrested on narcotics charges.

The officers conducted a check for outstanding warrants on Rodriguez. Sgt. Farrell became "convinced" that Rodriguez was wanted in an outstanding warrant and decided

to arrest him. *Rodriguez*. 280 F.3d at 1345.[1] Sgt. Farrell then began to handcuff Petitioner.

Contrary to Petitioner's assertion, Sgt. Farrell did not know (and was not "on notice") that Petitioner had recently had surgery on his elbow or that pins had been installed to assist in the healing of Petitioner's elbow when he handcuffed Rodriguez. App. B at 3a-4a (Deposition of Sgt. Farrell at 16). Petitioner admitted below that he removed his sling before Sgt. Farrell approached him, *See Rodriguez*, 280 F.3d at 1343; App. A at 15; App. E at 35a (Affidavit of Petitioner at p. 3, par. 10), and that he never told Sgt. Farrell that he had recently had surgery on his elbow. *Rodriguez*, 294 F.3d at 1278 n.2; Pet. App. A at 46; App. D at 18a-19a (Deposition of Petitioner at 191-192); App. F at 48a-49a (Affidavit of Sgt. Farrell at p. 5, par. 9).

As Sgt. Farrell pulled Plaintiff's arm behind him, Petitioner "attempt[ed] to pull it forward." App. D at 19a (Deposition of Petitioner at 191). Petitioner attempted to "restrain [Sgt. Farrell] from bending it any more than he was doing." App. D at 20a (Deposition of Petitioner at 192).

The Eleventh Circuit summed up each witness' testimony about the ensuing events:

> In his deposition, Plaintiff testified that he screamed in pain and screamed that his arm was hurting when Sgt. Farrell applied the pain

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[1] Since Petitioner is not seeking review of the lawfulness of the arrest or Office Szczepanski's actions, Respondent will not address these issues. For a discussion of the arrest claim below. *See*, *Rodriguez*, 280 F.3d at 1343 - 1351; Pet. App. A at 13-35.

> compliance handcuffing technique described in our original opinion. Also in that deposition, Plaintiff unequivocally states that, even after the handcuffing began: "I didn't even tell him then [that my arm was specifically injured], I was just telling him that he was hurting my arm." In contrast, Sgt. Farrell testified in his deposition that he simply handcuffed Plaintiff behind his back: he denies applying any pain compliance handcuffing technique when arresting Plaintiff or that Plaintiff screamed, in pain or otherwise. But, Sgt. Farrell does note that Plaintiff did ask him to be careful after Farrell started the handcuffing because his (Plaintiff's) arm was injured. We take the best set of facts for Plaintiff.

Rodriguez, 294 F.3d at 1278 n.2; *see*, Pet. App. A at 46; App. B at 4a-5a (Deposition of Sgt. Farrell at 16-17); App. D at 16a-20a (Deposition of Petitioner at 189-192); App. F at 48a-49a (Affidavit of Sgt. Farrell at p. 4, par. 9) "After arriving at the station roughly 10 minutes later, Rodriguez was placed in a holding cell and his cuffs were removed." *Rodriguez*, 280 F. 3d at 1345; *See* Pet. App. A at 20; App. D at 25a (Deposition of Petitioner at 216).

Unfortunately, "Rodriguez's earlier surgery made what otherwise would be a common non-excessive handcuffing technique (that ordinarily would be painful but cause minimal injury) a maneuver that caused severe injury and tragic results." *Rodriguez*, 280 F.3d at 1352.[2] Indeed,

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[2] Petitioner's medical evidence, viewed in the light most favorable to the Petitioner, was that the application of the

Rodriguez conceded that he would not have suffered any injury to his elbow if he had not recently had surgery on his arm. App. D at 28a (Deposition of Petitioner at 323).

Despite these tragic results, Sgt. Farrell did not use constitutionally impermissible excessive force and did not violate clearly established law.

ARGUMENT IN OPPOSITION TO PETITION

I. The Eleventh Circuit Correctly Held That Sgt. Farrell Did Not Use Excessive Force When He Handcuffed Petitioner.

A. The Eleventh Circuit Correctly Held That The Arresting Officer Did Not Use Constitutionally Excessive Force When He Handcuffed The Suspect Behind His Back And Raised His Arms To Secure The Suspect's Compliance, Even Though The Handcuffing Caused Serious Injury To The Suspect's Arm Due To The Suspect's Pre-Existing Elbow Injury, Because the Arresting Officer Did Not Know About the Pre-Existing Surgery Prior To Handcuffing The Suspect.

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handcuffs caused Petitioner's permanent injuries. There was no evidence offered to prove the assertion that leaving Petitioner in handcuffs for an additional fifteen minutes caused additional physical damage.

The Eleventh Circuit correctly held that "ordinary, reasonable force 'does not become excessive force when the force aggravates (however severely) a pre-existing condition the extent of which was unknown to the officer at the time.'" *Lee v. Ferraro*, 284 F.3d 1188, 1200 (11th Cir. 2002) (quoting and construing *Rodriguez*, 280 F.3d at 1351 - 1352). Contrary to Petitioner's assertions, certiorari would be improvident because the decision below follows a long line of federal precedent and does no violence to the rulings of this Court.

The Supreme Court has held that "[t]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). Officers are entitled to use "a minimal amount of force," *Nolin v. Isbell*, 207 F.3d 1253, 1258 (11th Cir. 2000), to arrest a suspect - such as routine handcuffing. *Atwater v. City of Lago Vista*, 522 U.S. 318, 354 -355, 121 S. Ct. 1536, 1558, 149 L. Ed. 2d 549 (2001) (officer with probable cause to believe suspect committed "even a very minor criminal offense in his presence...may, without violating the Fourth Amendment, arrest the offender"; Atwater's arrest was a"normal custodial arrest. She was handcuffed, placed in a squad car, and taken to the local police station."); *Soares v. State of Connecticut*, 8 F.3d 917, 921 (2d Cir. 1993); *Owens v. Colburn*, 860 F. Supp. 966 (N.D.N.Y. 1994); *Pritzker v. City of Hudson*, 47 F.Supp.2d 303, 310-311 (N.D.N.Y. 1999). The handcuff technique utilized by Sgt. Farrell is a relatively common, ordinarily non excessive technique to detain an arrestee "even if he does not attempt to resist or flee." *See Owens v. Colburn*, 860 F.Supp. at 972.

The Court below was faithful to this Court's Fourth Amendment precedents when it recognized that Sgt. Farrell

had a split second to decide whether Petitioner's screaming during the course of a midnight narcotics arrest after a traffic stop, amounted to resistance; whether to release this narcotics suspect during the handcuffing procedure; and whether such release might pose a risk of flight or to the safety to the officers. Sgt. Farrell testified that he handcuffed Petitioner behind his back, pursuant to Department policy, because he deemed it necessary for safety reasons. App. F at 48a-49a (Affidavit of Sgt. Farrell, p. 5, par. 9).

In this context, the Eleventh Circuit correctly answered the threshold inquiry that a court must undertake in a qualified immunity analysis when it held that Petitioner's evidence, if true, would not establish a constitutional violation. *Saucier v. Katz,* 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001). In *Saucier,* the Supreme Court held:

> Because "police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation," id., at 397, 109 S. Ct. 1865, the reasonableness of the officer's belief as to the appropriate level of force should be judged from that on-scene perspective, id., at 396, 109 S. Ct. 1865. We set out a test that cautioned against the "20/20 vision of hindsight" in favor of deference to the judgment of reasonable officers on the scene. id., at 393, 396, 109 S. Ct. 1865. *Graham* sets forth a list of factors relevant to the merits of the constitutional excessive force claim, "requir[ing] careful attention to the facts and circumstances of each particular case,

> including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." id., at 396, 109 S. Ct. 1865. If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.

Saucier, U.S. at 205 (citing *Graham v. Conner*, 490 U.S. at 386).

The Eleventh Circuit properly assessed Sgt. Farrell's "split second" decision to handcuff Petitioner and to use the pain compliance technique to secure Petitioner's cooperation. The Court of Appeals accurately viewed Sgt. Farrell's decision through the eyes of a reasonable police officer who did not know Appellee had recently had elbow surgery. *See Sherrod v. Berry*, 856 F.2d 802, 807 (7th Cir. 1988) (en banc) (the only evidence which is admissible against an officer in an excessive force case, is "the very information known to the officer at the time of his or her actions.") Thus, the Eleventh Circuit appropriately held that Sgt. Farrell's split - second decision to continue handcuffing a narcotics suspect being arrested during a midnight traffic stop, and to raise Petitioner's arms behind his back to secure compliance with the arrest, was not objectively unreasonable.

The Eleventh Circuit stated:

> As we noted in our original opinion, a police officer need not credit everything a suspect tells him. *See Marx v. Gumbinner*, 905 F.2d

1503, 1507 n. 6 (11th Cir. 1990). This idea is especially true when the officer is in the process of handcuffing a suspect. As another federal court recently noted, statements by suspects claiming (at the time of their arrest) to have pre-existing injuries are, "no doubt, uttered by many suspects who, if given the choice, would prefer not to be handcuffed at all and, if they must be restrained in that manner, would prefer that the handcuffs be in front." *Caron v. Hester,* No. CIV. 00-394-M, 2001 WL 1568761, at *8 (D.N.H. Nov. 13, 2001) (granting officer, who handcuffed suspect behind suspect's back, qualified immunity on excessive force claim despite officer's alleged knowledge--based upon suspect's testimony that he told the officer--of suspect's pre-existing injury when "[the officer] was not confronted with any objective manifestation of [the suspect's] claimed shoulder problem"). In the context of this case--a case in which Sgt. Farrell, after midnight on the side of the road, reasonably believed that Plaintiff (who, as we discussed in our original opinion, had no obvious signs of injury specifically to his arm) was a fugitive who had evaded capture, Sgt. Farrell's alleged discounting of Plaintiff's arm-injury claim (a claim not made until after Sgt. Farrell began to arrest Plaintiff despite the fact that he had been in Sgt. Farrell's company for roughly 30 minutes when the handcuffing began) was reasonable. *Cf. Jackson v. City of Bremerton,* 268 F.3d 646, 652 (9th Cir. 2001) (in arrest for failing to disperse, pushing suspect to the

> ground and kneeling on her back not excessive force despite fact that suspect informed officer of her pre-existing back and shoulder injuries); *Morreale v. City of Cripple Creek*, No. 96-1220, 1997 WL 290976, at *1, 5-6 (10th Cir. May 27, 1997)(in arrest for driving with a suspended license, milder handcuffing of suspect behind her back not excessive force despite suspect's request that she be handcuffed in front to avoid aggravating pre-existing shoulder injury).

Rodriguez, 294 F.3d at 1278; *See* Pet. App. A at 48. The Eleventh Circuit added:

> Perhaps, if Plaintiff, *before* the physical part of the arrest began, had also told Sgt. Farrell that Plaintiff's arm was injured, we would be more inclined to conclude that the Constitution required Sgt. Farrell to credit that statement. But, that is not what occurred here.

Rodriguez, 294 F.3d at 1278 n. 3; *See* Pet. App. A at 48.

The Eleventh Circuit's decision below is consistent the decisions of other federal courts which have held that the aggravation of a suspect's pre-existing injury does not elevate a routine use of force into constitutionally excessive force. In *Owens v. Colburn*, 860 F.Supp. 966 (N.D.N.Y. 1994), the Plaintiff contended that Police Officer Colburn "[i]n the process of . . . handcuff[ing the plaintiff], 'severely and abruptly'...pulled...[plaintiff']s hands...behind him, aggravating his preexisting spinal condition." *Id.* at 968. The *Owens* court granted summary judgment to defendant Officer Colburn and held that Officer Colburn did not use excessive

force. There, as here, "the facts [we]re undisputed as to Colburn's lack of knowledge of plaintiff's pre-existing...injury." *Id.* at 972. The court emphasized that a police officer's routine handcuffing of a suspect without "*actual* knowledge of plaintiff's preexisting condition... do[es] not rise to the level of a constitutional violation in the absence of visible injuries, complaints, or requests for medical treatment." *Id.* at 973 (emphasis added). *Compare McDermott v. Town of Windham,* 204 F.Supp.2d 54, 65 (D. Me. 2002) (". . . the fact that [Officer] Cox continued to place McDermott in handcuffs despite her telling him that she suffered from osteoporosis, without more, does not rise to anywhere near the level of excessive force.")

In *Pritzker v. City of Hudson*, 47 F.Supp.2d 303, 310-311 (N.D.N.Y. 1999), plaintiff suffered from a preexisting hand injury at the time that Officer Moon handcuffed him tightly. "Moon was aware that plaintiff had a preexisting injury to his wrists." *Id.* at 311. As in the case at bar, prior to Officer Moon handcuffing the plaintiff, "plaintiff . . . never informed Moon of the severity of that injury." *Id.* Officer Moon was entitled to qualified immunity on plaintiff's excessive force claim, because, "[r]egardless of whether there was a clearly established right not to be handcuffed, under the facts and circumstances of this case it was reasonable for Moon to believe that he did not violate plaintiff's rights." *Id.*

Similarly, in *Phillips v. City of Milwaukee*, 123 F.3d 586 (7th Cir. 1996), the Seventh Circuit held that police officers, who held down a previously resisting suspect who suffered from pre-existing illnesses which left him susceptible to suffocation, did not use excessive force even when, as a result of the officers' use of force, the suspect suffocated. *Id.* at 593-94. "That force, it turned out when combined with Mr.

Phillips' other health problems, resulted in Mr. Phillips' death." *Id.* at 594. "But, **the question is not whether the officers' actions aggravated an undiscovered injury or condition,** but whether their actions were objectively reasonable under the circumstances." *Id.* (emphasis added).

In *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996), police officers arrested the subject after a violent twenty minute struggle. They then hog-tied the subject. This caused the subject, who could not breathe, to suffocate. *Id.* at 1488-1489.

The Eleventh Circuit held that the arresting officers were entitled to qualified immunity as to the claims of mistreatment in custody, *Id.* at 1491-92, and excessive force. *Id.* at 1492. The officers were not responsible for the tragic consequences of the use of this restraint technique in the absence of some evidence that they knew that the suspect would suffocate. *Id.* at 1491-92.

In *Ford v. Retter*, 840 F.Supp. 489 (N.D. Ohio 1993), a police officer threw an arrestee to the ground. *Id.* at 490. The arrestee had previously broken his finger. The arrestee re-broke his finger in the fall. *Id.* The Court held that the arrestee failed to establish a claim for excessive force. *Id.* at 491.

In *Moore v. Gwinett County*, 967 F.2d 1495, 1497 (11th Cir. 1992), a police officer restrained Mrs. Moore, who was 8 months pregnant, by wrapping his arms around her abdomen. *Id.* Her child was stillborn. *Id.* Mrs. Moore and her husband testified "that the child's appearance at birth led them to believe that he may have been injured." *Id.*

The Court held:

> This case involves none of the indications of excessive force recognized in our past cases...Under these circumstances, common sense dictates a finding that Officer Meadow's use of force was reasonable according to established standards. Even adopting Moore's version of the facts, there is no suggestion that Meadows went beyond firmly taking hold of Moore and contacting her abdomen in the process. The act of physically holding back a misdemeanor suspect who is attempting to leave the scene, even given her pregnant condition, cannot sensibly be considered disproportionate as measured by this circuit's precedents. Accordingly, ***we find no excessive force*** sufficient to indicate that Officer Meadows violated any clearly established constitutional right.

Id., at 1499 (emphasis added).

B. The Eleventh Circuit Correctly Held That The Arresting Officer Did Not Use Constitutionally Excessive Force By Leaving The Suspect's Handcuffs On for 15 Minutes After The Arrest, Until The Suspect Was Transported To The Police Station, Because The Arresting Officer Did Not Know About The Suspect's Pre-Existing Elbow Surgery.

The Court should not grant Certiorari because the Court of Appeals correctly decided that Sgt. Farrell used permissible force when he left Petitioner handcuffed behind his back during the fifteen minute drive to the police station. Petitioner admits that, even after he was handcuffed, he never told Sgt. Farrell that he had recently had surgery on his elbow. *Rodriguez*, 294 F.3d at 1278 n.2; Pet. App. A at 46. Moreover, Petitioner "never asked Sgt. Farrell to handcuff him in front of his body, instead of behind his back. Nor did P[etitioner] ask for medical assistance." *Rodriguez*, 294 F.3d at 1279; Pet. App. A at 48-49. At the station, the officers released Petitioner from his handcuffs and gave him his medication.

As noted in the Eleventh Circuit's opinion denying rehearing, this case does not involve any of the brutal handcuffing techniques or gratuitous delays in removing the handcuffs despite requests by the suspect. *Id.* Sgt. Farrell's routine handcuff technique and the brief period during which Petitioner was cuffed distinguishes this case from the decisions which Petitioner erroneously asserts are in conflict with the opinion below. *Compare*, *Grooms v. Dockter*, 76 F.3d 378, 1996 WL 26917, *1 (6th Cir. 1996) ("Grooms repeatedly told officers that his handcuffs are too tight"; officers left Grooms in handcuffs in police station); *Kostrzewa v. City of Troy*, 247 F.3d 633, 637-638, 640-641 (6th Cir. 2001) (cause of action for excessive force stated by complaint alleging tight handcuffing, that officers drove recklessly to aggravate plaintiff's pain and that officers re-cuffed plaintiff's already visibly swollen hands); *Bastien v. Goddard*, 279 F.3d 10, 12-13 (1st Cir. 2002)("Appellant immediately complained that the handcuffs placed on him were too tight and causing pain. No adjustments were made"; "[a]t the police station, appellant remained handcuffed for approximately four more hours, although he repeatedly

requested that the cuffs be removed or loosened."). Moreover, the Eleventh Circuit's decision is consistent with the decisions of other federal courts which have held that it is not excessive force for an officer, without "objective" knowledge of the suspect's pre-existing injury, to briefly continue to handcuff the suspect, *see Rodriguez,* 294 F.3d at 1278 (*citing, Morreale v. City of Cripple,* No. 96-1220, 1997 WL 290976, at *1, 5-6 (10th Cir. May 27, 1997) and *Caron v. Hester,* No. CIV. 00-394-M, 2001 WL 1568761, at *8 (D.N.H. Nov. 13, 2001)), or to use minor force to control the suspect. *Id. (citing, Jackson,* 268 F.3d at 652); *See also Owens*, 860 F.Supp. at 973; *Moore v. Gwinett County*, 967 F. 2d at 1497.

C. The Opinion Below Does Not Conflict With Decisions Of Other Courts Of Appeal.

Sgt. Farrell's lack of knowledge of Petitioner's pre-existing elbow surgery, *see* App. B. at 3a-4a (Deposition of Sgt. Farrell at 16), distinguishes this case from some of the decisions which Petitioner claims are in conflict with the opinion below. *Compare Walton v. City of Southfield*, 995 F.2d 1331, 1342 (6th Cir. 1992) (fact question existed as to whether officer knew plaintiff had an injured shoulder; plaintiff begged not to be handcuffed because of injured shoulder); *Guite v. Wright*, 147 F.2d 747, 750 (8th Cir. 1995) (officers made warrantless entry into a home to arrest a suspect; the officers pushed the suspect's father despite the visible sling that the father was wearing on his shoulder).

Moreover, the Eleventh Circuit's decision is not in conflict with the decisions which Petitioner relies on, in which handcuffing was part of a more brutal seizure. *See Graham v. Conner*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443

(1989). For example, in *Fundiller v. The City of Cooper City*, 777 F.2d 1436, 1441 (11th Cir. 1985), the complaint alleged that the officer "began firing shortly after drawing his weapon. Only after being hit at least once did Fundiller reach beneath the car seat where his weapon was concealed. The two shots he fired, it is contended, were in self-defense... [O]ther individual police officers arrived on the scene just after the shooting. Instead of rendering aid, the officers dragged appellant from his car and, leaving him face down on the ground, shackled his hands behind him. Several officers stated that they hoped appellant would bleed to death and shouted obscenities at him while he lay on the ground moaning in pain." *Id; See also LaLonde v. County of Riverside*, 204 F.3d 947, 952 (9th Cir. 2000).

The opinion below also does not conflict with the decisions of the various Courts of Appeal, cited by Petitioner, in which unusually tight handcuffing or gratuitous delays in removing the handcuffs injured the suspect. *See Grooms v. Dockter*, 76 F.3d 378, 1996 WL 26917, *1; *Martin v. Heideman*, 106 F.3d 1308, 1312 (6th Cir. 1997) (fact question as to whether officer used "too tight handcuffing"); *Kostrzewa v. City of Troy*, 247 F.3d at 637- 638, 640; *Palmer v. Sanderson*, 9 F.3d 1433, 1435-1437 (9th Cir. 1993) (plaintiff was cuffed "so tightly that he suffered pain and bruises"); *Hansen v. Black*, 885 F.2d 642, 645 (9th Cir. 1989)- (handcuffs put on in "abusive manner," bruising plaintiff's wrists and upper arm); *Goff v. Bise*, 173 F.3d 1068, 1074 (9th Cir. 1999) (painful handcuffing and rough treatment resulting in a torn rotator cuff); *Johnson v. Morel*, 876 F.2d 477, 478 (5th Cir. 1989), *overruled on other grounds, Harper v. Harris County, Tex.*, 21 F.3d 597 (5th Cir. 1994) ("Morel applied the handcuffs so tightly that they not only broke the skin, but left apparently permanent scars on Johnson's wrists and disabled him from his employment

for about two weeks."); *LaLonde v. County of Riverside*, 204 F.3d at 952 ("For twenty to thirty minutes, LaLonde sat on the couch with his hands handcuffed and the pepper spray burning his face. LaLonde testified 'when my wrists started to really bother me bad, I said something about it.' LaLonde told the officers, 'These handcuffs are too tight. They're cutting off my circulation'."); *Bastien v. Goddard*, 279 F.3d at 10,12-13. *See* discussion at pp. 13-14 above.

To the contrary, Rodriguez conceded below that he would not have suffered any injury if he had not recently undergone elbow surgery. *See* App. D at 28a (Deposition of Petitioner at 323). The unfortunate consequences here were the result of Petitioner's pre-existing condition – not brutal handcuffing. *Id.*

The Eleventh Circuit's decision is also not in conflict with the cases, cited by Petitioner, in which the handcuffing was excessive because it was not incident to a lawful arrest or was not necessary to further any legitimate law enforcement interest. *Heitschmidt v. City of Houston*, 161 F.3d 834, 838 (5th Cir. 1998) (plaintiff was painfully handcuffed and denied access to bathroom for four hours during a search and seizure); *Johnson v. Morel*, 876 F. 2d at 478 (officer arrested Johnson for no reason after screaming racial epithets at him; case is compared to "'night rider' cases of an earlier day").

Because precedent is clear that Sgt. Farrell did not use excessive force, the Court should deny Petitioner's Petition for a Writ of Certiorari.

II. The Eleventh Circuit Correctly Held That Sgt. Farrell Is Entitled To Qualified Immunity.

A. The Eleventh Circuit Correctly Held That Respondents Are Entitled To Qualified Immunity Because The Law Is Not Sufficiently Clearly Established That Handcuffing A Suspect Behind His Back And Raising His Arms To Secure The Suspect's Compliance Is Constitutionally Excessive Force, Even Though The Handcuffing Caused Serious Injury To The Suspect's Arm Due To The Suspect's Pre-Existing Elbow Injury, Since The Arresting Officer Did Not Know About The Pre-Existing Elbow Surgery Prior To Handcuffing The Suspect.

B. The Eleventh Circuit Correctly Held That Respondents Are Entitled To Qualified Immunity Because Every Reasonable Police Officer Would Not Inevitably Conclude That Handcuffing A Suspect Behind His Back And Raising The Suspect's Arms To Secure The Suspect's Compliance Was Excessive, Even Though The Handcuffing Caused Serious Injury To The Suspect's Arm Due To The Suspect's Pre-Existing Elbow Injury, Since The Arresting

Officer Did Not Know About The Suspect's Pre-Existing Elbow Surgery Prior to Handcuffing The Suspect.

C. The Eleventh Circuit Court Held That Respondents Are Entitled To Qualified Immunity Because The Law Is Not So Clearly Established That An Arresting Officer Used Excessive Force, By Leaving A Suspect's Handcuffs On For 15 Minutes After The Arrest, Until The Suspect Was Transported To The Police Station, Since The Arresting Officer Did Not Know About the Suspect's Pre-Existing Elbow Surgery.

In the present case, the Court should deny Certiorari because the Eleventh Circuit rightly found, "[i]n the alternative...that Sgt. Farrell is entitled to qualified immunity on the excessive force claim." *Rodriguez*, 280 F.3d at 1353 n.21. This holding is also consistent with decisions of the Supreme Court and the various Circuits.

In *Saucier*, the Supreme Court noted that "[if] no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established." *Saucier*, 533 U.S. at 201; 121 S. Ct. at 2156.

An officer is entitled to qualified immunity unless the unlawfulness of his conduct "is apparent in light of pre-existing law." *Anderson v. Creighton,* 483 U.S. 635, 640, 107 S.Ct. 3034, 3039 (1987). An officer is not entitled to qualified immunity only if "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand what he is doing violates that right." *Id.* "The relevant question...is the objective (albeit fact specific) question of whether a reasonable officer could have believed [his actions to be lawful] in light of clearly established law and the information the searching officers possessed." *Id.* 483 U.S. at 640, 107 S.Ct. at 3040.

In *Saucier*, the Supreme Court held:

> [T]here is no doubt that *Graham v. Connor, supra,* clearly establishes the general proposition that use of force is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness. Yet that is not enough. Rather, we emphasized in *Anderson* "that the right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." 483 U.S. at 640, 107 S. Ct. 3034. The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. See *Wilson v. Layne*, 526 U.S. 603, 615, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999); ("[A]s

> we explained in *Anderson*, the right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was clearly established.")

Saucier, 533 U.S. at 201-202; 121 S. Ct. at 2156.

"Qualified immunity operates in this case, then, just as it does in others, to protect officers from the sometimes 'hazy border between excessive and acceptable force,' and to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful." *Id.*, 533 U.S. at 206, 121 S. Ct. at 2158 (*quoting Priester v. Riviera Beach*, 208 F.3d 919, 926-927 (11th Cir. 2000)). "The question is what the officer reasonably understood his powers and responsibilities to be, when he acted, under clearly established standards." *Id.*, 533 U.S. at 208, 121 S. Ct. at 215.

In the present case, the Eleventh Circuit correctly held that Sgt. Farrell is entitled to qualified immunity because every reasonable officer would not have inevitably concluded that handcuffing the Petitioner was excessive. *See Atwater*, 522 U.S. at 354-355, 121 S. Ct. at 1558. As the opinions discussed above at pp. 7-12 reflect, the law is not clearly established that a police officer arresting a narcotics suspect during a midnight traffic stop is prohibited by the Fourth Amendment from handcuffing the suspect behind his back, if the officer does not know that the suspect has a pre-existing serious injury or exhibits "no obvious signs of injury to his arm." *Rodriguez*, 294 F.3d at 1278; Pet. App. A at 47. The *Owens* court recognized that "'[n]either the Supreme Court nor the Second Circuit has established that a person has the right not to be handcuffed in the course of a particular arrest, even if he does not resist or attempt to flee." *Owens*, 860 F.Supp. at 972 (*quoting Soares v. State of Connecticut*, 8

F.3d 917, 921 (2d Cir. 1993)); *McDermott*, 204 F.Supp. 2d at 64 (quoting holding in *Soares* that "the right in question [was] the right not to be handcuffed in the situation presented to the arresting officers.").

As discussed above at pp. 7-10, the law is also not clearly established that an officer, who utilizes an ordinary non-brutal handcuffing technique, must discontinue handcuffing the subject because the suspect cries out. Moreover, as noted above at pp. 13-16, the law is not clearly established that leaving such a subject in handcuffs for just fifteen minutes, until he is transported to the police station, violates the Constitution.

Since pre-existing case law did not clearly establish that Sgt. Farrell utilized excessive force when he arrested Petitioner, the Eleventh Circuit properly determined that Sgt. Farrell is entitled qualified immunity.

CONCLUSION

Since the Eleventh Circuit's opinion was correctly decided and does not conflict with decisions in other Circuits, the Court should deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted:

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APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 98-997-CIV-ORL-19A

JOE JOHN RODRIGUEZ, Plaintiff, v. CITY OF WINTER PARK, FLORIDA, a municipal corporation, DOUGLAS M. BALL, WAYNE W. FARRELL, and LOIS SZCZEPANSKI, Defendants.	)

Deposition Of:	Wayne W. Farrell
Taken By:	Plaintiff
Date:	April 29, 1999
Time:	1:20 p.m.
Location:	2600 Maitland Center Parkway Orlando, Florida
Reported By:	Elizabeth M. Love Registered Professional Reporter

Deposition excerpts of Wayne W. Farrell, 4/29/99

[p.5]

particular case?

A I volunteered to back up officer Szczepanski at a traffic stop at her request for another officer.

Q And did dispatch contact you or did she contact you directly or how did you hear about it?

A She asked for a backup, and I heard it, and I volunteered to accept that particular assignment.

Q Okay. In other words, you called dispatch and said you were going to take it?

A Correct.

Q And you were her supervisor; is that correct?

Q That particular night, yes.

Q And just to clarify, we're talking about September 8, 19957

A Yes, sir.

Q You get to the area where she has the other carstopped and what do you observe?

A She's standing near a vehicle and there are, I believe, two other people standing near that vehicle.

Q Okay. Do you recall one way or the other whether or not officer Szczepanski had a rider with her that night?

A There was no one at the scene with her, so I don't believe she did.

MR. GUTMACHER: Just for the record, what I'm going to do is use the same exhibits with the same numbers as

* * *

[p.16]

A She looked at him. I don't know -- I don't recall what parts she checked, no, sir.

Q Do you recall if he had to roll up his shirt or take off his shirt in order for her to see?

A something had to be rolled up because he had it on his upper arm, so something had to be moved to look at it on at least one.

Q You don't recall whether she looked at one or more than one at this particular time?

A I don't recall what she did. I know I looked at one.

Q Okay. Did you notice on his left arm any bandages? Gauze?

A At the scene?

Q Yes, sir.

A No, sir.

Q Did you notice at any time that his left arm was in a sling?

A I didn't see a sling on him at all.

Q Did he indicate to you prior to your handcuffing him that he had been involved in the motorcycle accident?

A No, sir.

Q That was only later at the station?

A No, sir. It was during. I knew there was an injury. I just didn't know it was a motorcycle accident.

Q Okay. And I'm a little confused. When you say you knew there was an injury, how did you know there was an injury?

A When I was putting his arm behind his back to handcuff him, he went, oooooh, be careful, I have an injured arm, or something to that effect.

Q Did he seem to be in pain at the time that you were handcuffing him?

A He didn't cry out. He just said, oooooh.

Q He did not fall to his knees?

A No, absolutely not.

Q As officer Szczepanski's supervisor, did you have the right to overrule her decision to make an arrest?

A Yes, I have the authority to.

Q Do you feel that Joe Rodriguez is a common name?

MR. BEAMS: Object to the form.

A I couldn't tell you. I would have no idea.

Q Did you know that the height of the individual who had the warrant out for him was supposedly five foot six inches?

A No, sir.

Q Did you know that the weight of the individual who had the warrant out for him was supposedly 139 pounds?

A No, sir.

Q Did you know that the person who had the warrant

* * *

Deposition excerpts of Wayne W. Farrell, 4/29/99

[p.35]

MR. BRAMS: The birth certificate?

MR. GUTMACHER: Yes.

Q Do you know one way or the other whether he had it in his possession that morning?

A I don't recall, sir.

Q Showing you what's been marked as Plaintiff's Exhibit 14, which were black and white copies of some identifications the plaintiff is claiming were in his possession that morning, do you recognize any of those as having seen any of those?

A No, sir. I don't recall those.

Q You saw my client at the -- did you transport my client to the station?

A Yes, sir, I did.

Q Okay. And he never complained while he was being transported about the handcuffs?

A I don't have a recollection of that.

Q Okay. And do you know -- did you place him in a holding cell at Winter Park station?

A Yes, sir.

Q And were you in view of him while he was in that cell for any length of time?

A For a short period of time.

Q During any of that time, did you see him or hear him complaining Of pain or indicating that he was in significant pain?

A No. He told me he was sore, but he didn't tell me that he was in excruciating pain, and it didn't look as if he

Q And did he indicate where he was sore?

A His arm.

Q His left arm?

A I don' t remember, sir.

Q Okay. And do you remember where on the arm?

A No, sir; wherever his injury was.

Q Okay. Is there anything pertinent about your observations in this particular case that you feel we have missed in this deposition?

MR. BRAMS: Let me object to the question. That is, I think, an unfair, open-ended question, and it's vague and ambiguous. There may be all sorts of things that are pertinent or

relevant or not pertinent or not relevant that he may or may not know about I mean if you want to ask him specific questions, that's fine, but I really don't see how he can answer a question that's that broad.

I'm not instructing him not to answer. You can go ahead and answer it. But I just want it to be very clear that, in my view, there's no way that Sergeant Farrell can answer that question in any knowledgeable

* * * *

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 98-997-CIV-ORL-19A

JOE JOHN RODRIGUEZ,
Plaintiff,

v.

CITY OF WINTER PARK, FLORIDA, a municipal corporation, DOUGLAS M. BALL, WAYNE W. FARRELL, and LOIS SZCZEPANSKI,
Defendants.

Deposition Of:	Lorri Szczepanski
Taken By:	Plaintiff
Date:	April 29, 1999
Time:	9:40 a.m.
Location:	2600 Maitland Center Parkway Orlando, Florida
Reported By:	Elizabeth M. Love Registered Professional Reporter

Deposition excerpts of Lorri Szczepanski, 4/29/99

APPEARANCES:

Jon H. Gutmacher, Esquire
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Appearing on behalf of the Plaintiff

Bruce R. Bogan, Esquire
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Appearing on behalf of Defendant, City of Winter Park

Craig L. Brams, Esquire
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Maitland, Florida 32751

Appearing on behalf of Defendants, Wayne W. Farrell and Lorri Szczepanski

ALSO PRESENT:
Wayne W. Farrell

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No. 16 (Department Guide) 38

(Exhibit Numbers 7, 8, 12, 13, and 17
retained by counsel.)

* * *

[p.9]

Foulkes under arrest at 12:24 a.m., do you have an estimate as to when Sergeant Farrell arrived, in the sense that five minutes before, ten minutes before, if you can?

A I believe he showed up prior to her arrest, but I don't have an exact time frame.

Q Okay. And you could not at this time block it off in the sense that at least five minutes, at least ten minutes?

A Well, if the stop occurred at 010 and she was arrested at 024, that's only 14 minutes, so it had to be within those two time frames.

Q Okay. Do you recall one way or the other whether you had a passenger or a rider in your vehicle?

A I don't recall having a rider.

Q Okay.

A I was a K-9 officer at the time.

Q And when you say you don't recall having a rider, would that answer be in the sense that, to your recollection, you did not have a rider?

A Correct.

Q You were in a marked unit and in full uniform?

A Yes.

Q And when Sergeant Farrell arrived, I assume he was in a marked unit and in full uniform?

A I believe he was.

* * *

[p.60]

Q Okay. Do you recall how he was handcuffed in this particular instance?

A No.

Q To your knowledge, is there any reason why he should not have been told that he was about to be handcuffed prior to being handcuffed?

A Officer safety.

MR. BRAMS: Let me also just object to the question as being vague and ambiguous; lacking a predicate. The witness has already testified she's not the individual who handcuffed Mr. Rodriguez.

Q At the time that Mr. Rodriguez was handcuffed, the female was already handcuffed and in a unit; is that correct?

A Yes.

Q And the only other person in the immediate vicinity besides you and Sergeant Farrell was my client; is that correct?

A Yes.

Q Okay. And were you in close proximity to Sergeant Farrell at the time that he decided to cuff my client?

A I don't know where I was. I may have been searching the vehicle. I don't recall.

Q Okay. When was the first time that you found out that you had the wrong person?

A I don't recall.

* * * *

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 98-997-CIV-ORL-19A

JOE JOHN RODRIGUEZ,
Plaintiff,

v.

CITY OF WINTER PARK, FLORIDA, a municipal corporation, DOUGLAS M. BALL, WAYNE W. FARRELL, and LOIS SZCZEPANSKI,
Defendants.

Volume I

The deposition of JOE JOHN RODRIGUEZ taken pursuant to notice on behalf of the Defendants, at the office of Eubanks, Hilyard & Bogan 20 N. Orange Avenue, Suite 600, Orlando, Florida, before Lisa K. Penkacik, Certified Shorthand Reporter, Registered Professional Reporter, CP-CM, and Notary Public, State of Florida at Large.

APPEARANCES:

JON H. GUTMACHER, ESQUIRE

200 N. Thornton Avenue
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On behalf of the Plaintiff.

CRAIG L. BRAMS, ESQUIRE
Wyatt & Tolbert
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Maitland, Florida 3751

On behalf of the Defendants Sergeant Farrell and Officer Szczepanski.

* * *

[p.189]

A. She was looking in it. She was still searching in it.

Q. Did you have your eyes on Officer Szczepanski when this was happening?

A. No, I was looking at the floor and in pain.

Q. Is it correct, then, that you were handcuffed before you had any conversation with Sergeant Farrell about your physical problem?

A. I'm sorry?

Q. Is it correct, that you were handcuffed by Sergeant Farrell before you had any conversation about your

physical problems?

A. No, he was asking me about my medication and my bag, what it was for and I told him a motorcycle accident.

Q. And then he asked you about tattoos, correct?

A. Yes.

Q. And that is when you were showing him the tattoos that, according to your recollection, Sergeant Farrell began handcuffing you?

A. Yes.

Q. So it is correct, then, that the conversation about your arm hurting took place after you were handcuffed as opposed to before you were handcuffed?

A. Oh, yeah, yes.

[p. 190]

Q. You and Sergeant Farrell did not have a conversation about your arm before he started handcuffing you, did you?

A. Yes, we did.

Q. I thought you just told me that it was when he started handcuffing you that you said, no, my arm hurts?

A. No, he said -- he asked me about my arm, my medication and what the problem was, motorcycle accident, okay. That was prior to him handcuffing me.

Q. You're adding some additional information now. Did he ask you, not just about the medication, but asked you why you were taking the medication?

A. He asked me what the medication was for.

Q. What did you say?

A. I said it was for a motorcycle accident, I just got out of the hospital.

Q. Did you give any information to Sergeant Farrell other than telling him that it was a motorcycle accident?

A. No.

Q. Did you tell him whether – did you tell him any of the specifics of your injury?

A. No.

Q. Is it correct, then, that you did not have any discussion with Sergeant Farrell about the specifics of your [p.191] injury until after he handcuffed you; isn't that true?

A. The specifics, you mean?

Q. You didn't tell Sergeant Farrell about the

details of your injury --

A. No.

Q. Until after he handcuffed you; is that correct?

A. I didn't even tell him then, I was just telling him that he was hurting my arm.

Q. And when Sergeant Farrell heard you say that he was hurting your arm, at that point he asked you what was wrong?

A. No, he just said, stop resisting.

Q. As you were being handcuffed and your arm was being pulled behind you, did you attempt to pull it forward?

A. Yeah.

Q. So there was a point in the procedure when you did attempt to resist the direction in which your arm was being pulled?

A. No.

Q. Well, is it true that in order to handcuff you, Sergeant Farrell was attempting to pull your arms behind your back?

[p.192]

A. He did.

Q. And during that procedure, even though you were unsuccessful, you did attempt to move at least your left arm in the opposite direction to prevent it from being pulled behind your back?

A. He was forcing it from the space that it was in. I was only limited and he was like trying to put it up behind my neck.

Q. And it caused discomfort to you?

A. Discomfort?

Q. Discomfort to you?

A. Oh, yeah.

Q. And when you felt the discomfort, you responded by attempting to move your arm forward; isn't that true?

A. No, he was trying to move it more than it could go.

Q. And were you attempting to prevent Sergeant Farrell from moving your arm by moving your arm forward, back into a position that was more comfortable?

A. No, I was trying to restrain him from bending

it any more than he was doing.

Q. You were trying to prevent Sergeant Farrell from moving your arm completely behind your back?

A. Up to my neck, behind my back.

[p.193]

Q. Is that correct? Is that what you were trying to prevent Sergeant Farrell from moving your arm further behind your back?

A. No. I am saying that he was pushing my arm further than it could go.

Q. I understand.

A. He was saying I was resisting. I told him I was not.

Q. I understand. Is it correct that when Sergeant Farrell began pushing your arm behind the back farther than it could go, you attempted, as best you could, to keep your arm in place and prevent it from being forced further than it could go?

A. No.

Q. So you did not in any way attempt to apply pressure in the opposite direction?

A. I couldn't.

Q. Did you attempt to do so?

A. No.

Q. Did -- after you were handcuffed, did you have any conversations with Sergeant Farrell about whether or not you were the right person who was arrested?

A. Yes.

Q. And what conversation did you have with him?

A. I told him he had the wrong person.

* * * *

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 98-997-CV-19A

JOE JOHN RODRIGUEZ,	)
Plaintiff,	)
	)
v.	)
	)
CITY OF WINTER PARK,	)
a municipal corporation, DOUGLAS M.	)
BALL, WAYNE W. FARRELL, and	)
LOIS SZCZEPANSKI,	)
Defendants.	)
	)

Volume II

Tuesday, July 20, 1999
9:10 a.m.

The deposition JOE JOHN RODRIGUEZ, taken pursuant to notice on behalf of the Defendants, at the Office of Eubanks, Hilyard & Bogan, 20 N. Orange Avenue, Suite 600, Orlando, Florida, before Lisa K. Penkacik, Certified Shorthand Reporter, Registered Professional Reporter, CP-CM, and Notary Public, State of Florida at Large.

Deposition excerpts of Joe John Rodriguez (v.II), 7/20/99

APPEARANCES :

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On behalf of the Defendants Sergeant Farrell and officer Szczepanski

* * *

[p.216]

A. Yes.

Q. Did you have any conversation with Miss Foulkes?

A. No.

Q. When you arrived at the police station, were the handcuffs removed?

A. Yes.

Q. So, you were placed in handcuffs for approximately five minutes between the time you were first handcuffed and the time that the handcuffs were removed at the police station?

A. No.

Q. What is inaccurate about that statement?

A. You asked me, it took five minutes to get to the police station.

Q. How long after you arrived at the police station were the handcuffs removed?

A. I'd say about 10 more minutes.

Q. Where were you during the i0 minute period?

A. Being escorted from the car into the police station, waiting at the police station, standing there until they went and got the key for the cells and then I was let go.

Q. So about 15 minutes after you were handcuffed, the handcuffs were taken off?

* * *

[p.280]

MR. GUTMACHER: What the procedures of St. Johns County are as to what he understands them to be.

Q. Based on what your officer's explanation to you was?

A. Yes.

Q. That there was a procedure that required you to be handcuffed behind your back?

A. Correct.

Q. Now, is it correct, then, on the evening when you were arrested by the Winter Park police, that you said you testified you were wearing a sweat shirt; is that correct?

A. Yes.

Q. And am I correct that that sweat shirt was a long sleeved sweat shirt?

A. Yes.

Q. And would it be correct that the scar on your arm was not visible to Sergeant Farrell, assuming he was the one that handcuffed you at the time the handcuffing procedure occurred?

A. Correct.

Q. And it would be correct that there wouldn't be any deformity that would have been visible to Sergeant Farrell when he reached out to grab your arm and to place [p.281]it behind your back; is that correct?

A. What do you mean "deformity"?

Q. Well, obviously you've held your arm out here today and showed us how that it does not align correctly and it does not appear symmetrical with your other arm, correct?

A. Correct.

Q. And would it be correct that that would not be visible through a sweat shirt as you were standing there out on the street that day to Sergeant Farrell prior to him placing you in handcuffs?

A. Correct.

Q. And I take it that you would agree, as far as you are aware in this case, that there is nothing as far as you personally have knowledge about that would lead you to believe that either of the Winter Park police officers were acting malicious towards you in placing you under arrest that day?

A. It was just the initial handcuffing of the twisting of the arm, I mean, because, you know, the way he grabbed it, and just flipped it behind me, twisting it while I was yelling; you know what I'm saying? I was in pain. It was like whoa, whoa, wait a minute, wait. I just like lost it. I was yelling out there in pain.

Q. I understand that. But going back to my

* * *

Deposition excerpts of Joe John Rodriguez (v.II), 7/20/99

[p.323]

Q. During those arrests, were you handcuffed with your hands in front of you or in back of you?

A. In back.

Q. Did you ever request that you be handcuffed in any other way or that you not be handcuffed?

A. No.

Q. Did you ever sustain any injury in connection with those arrests?

A. No.

Q. I take it that as far as Officer -- Sergeant Farrell handcuffing you is concerned, if your arm hadn't already been injured from your view, the handcuffing wouldn't be a problem, right?

A. Correct.

Q. There wasn't anything he did about -- there was not anything that Officer Farrell did as far as the handcuffing procedure itself was concerned that was unusual; is that true?

A. I've never been handcuffed and dropped to my knees before, no.

Q. Well, as far as putting -- your putting your hands behind your back and securing them where the

handcuffs is concerned, Sergeant Farrell handcuffed you in the usual manner; is that true?

A. Yes.

* * *

[p.333]

A. A higher level.

Q. Where on your back was that?

A. It was forced upward from the rear. That's what brought me down to my knee.

Q. Was it equal or beyond the shoulder blades, if you recall one way or the other?

A. It was almost up to the shoulder blade.

Q. Did you consider that a normal way of being handcuffed in comparison with the way you had been handcuffed prior to that time?

A. No.

Q. And what do you consider abnormal or unusual about the way that Sergeant Farrell manipulated your arms?

A. The forcing it up -- upwards while I was complaining about the pain.

Q. Did you feel that there was any need to continue to force your arms upwards?

A. There was no need, no.

Q. Did Sergeant Farrell, prior to -- now, which hand did he grab first to handcuff?

A. My left.

Q. The injured arm?

A. Yes.

Q. And what did he do with that arm?

[p.334]

A. Twisted it back and brought it straight up my

Q. And when he was doing that to your left arm, had he done anything yet to your right arm?

A. No.

Q. As he lifted your left hand behind you, at what point do you feel pain?

A. As soon as he twisted it.

Q. Were you able to manipulate your arm to that position on your own?

A. No.

Q. When I twisted it, and you told him that -- what?

A. I just started yelling and I just said, whoa, wait a minute, wait a minute, what are you doing? What are you doing? Because he didn't even tell me I was under arrest.

Q. Had he seen the prescription bottles prior to that time?

A. Yes.

Q. Had he discussed with you that you had been hospitalized prior to that time?

A. I told him I just got out of the hospital.

Q. Okay. Did you ever indicate to him prior to that time that your arm had been injured in the [p. 335] motorcycle accident?

MR. BRAMS: objection, asked and answered. already answered that question.

MR. BOGAN: Join.

Q. You can answer it.

A. I'm sorry, could I have the question again? (The pending question was read back by the Reporter.)

MR. BRAMS : Same objection.

A. I told him that I was in a motorcycle accident and then he looked -- that's why he asked me, what's this for? And I said, well, I had a motorcycle accident.

Q. Okay. What I'm asking is, did you ever tell him that your arm had been injured in the motorcycle accident?

MR. BRAMS: object to the question; it's been asked and answered.

A. Yes.

Q. Did you tell him that before he handcuffed you?

MR. BRAMS: Objection, asked and answered.

A. No.

Q. Okay. When you complained of pain as he brought your arm behind you, did he stop in any way?

A. No.

* * * * *

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 98-997-CIV-ORL-19A
JUDGE: PATRICIA C. FAWSETT

JOE JOHN RODRIGUEZ, Plaintiff,	)
v.	)
CITY OF WINTER PARK, FLORIDA, a municipal corporation, DOUGLAS M. BALL, WAYNE W. FARRELL, and LOIS SZCZEPANSKI, Defendants.	)

COUNTY OF ORANGE
STATE OF FLORIDA

AFFIDAVIT OF THE PLAINTIFF JOE JOHN RODRIGUEZ

CAME BEFORE ME the undersigned authority, this 2nd day of August, 1999, the person of JOE JOHN RODRIGUEZ, personally known to me, who after being duly sworn did upon his oath depose and state that the following facts are true and correct:

Affidavit of Joe John Rodriguez, 8/2/99

1. On the date of my arrest by the Winter Park Police Department, September 8, 1995, I had recently been discharged from the hospital (8/29/95) due to a serious motorcycle accident that occurred on July 9, 1995.

2. Immediately prior to my arrest I was dressed in long sleeved sweatshirt with my left arm bandaged underneath, and I was sitting in the front passenger seat of a car driven by a friend of mine, Patricia Foulkes, who was taking me to my home in the City of Winter Park, coming from Lakeland.

3. When I was in the vehicle, I had my left arm in a padded hospital sling which had a strap around my neck. I also had a small pillow under the arm, upon which the sling rested.

4. At the time my weight was down from my normal "200 - 210 Ibs" to between 180 - 190 lbs.

5. My height was and is 5'11", my eyes are brown, I have no facial scars.

6. I had 6 tatoos at the time, as follows:
biceps:
right: "Life's a Beach"
Left: picture of a Phoenix bird

shoulder blades:
right: "New York"
left: "Florida"

ankles:
right: picture of iguana
left: beach scene with palm tree

7. I was born on 3/23/53 in the Bronx, New York. I have always used my birthname of Joe (John) Rodriguez, and none other. My social security number is: 115-42-5388.

8. In 1985 1 was sentenced to three years in the Florida prison system on bad check charges.

9. On the morning of the arrest on September 8, 1995, Ms. Foulkes was driving her vehicle, and was stopped at approximately 12:10 a.m for a tag light that was supposedly not working by Officer Szczepanski of the Winter Park Police Department.

10. Officer Szczepanski had Ms. Foulkes exit, and then asked Ms. Foulkes if she could search the car, and Ms. Foulkes said yes. Officer Szczepanski then walked around to the passenger side of the vehicle I was in, leaned down, and looked into the car. She asked me to hand her Ms. Foulkes' purse. I reached across the seat with my right hand, and handed it to her through the passenger side window. She then asked me to exit, before she looked through the purse. Officer Szczepanski would have been able to see my sling when she looked at me in the ear. I took the sling off before exiting the car.

11. When I got out of the car, Officer Szczepanski was involved with searching the purse Patricia Foulkes,

and placed her into Sgt. Farrell's police unit. Thereafter, Officer Szczepanski began to search the car, and continued to do so even after I was handcuffed by Sgt. Farrell.

12. All communication between the police and myself Were with Sgt. Farrell. Officer Szczepanski never spoke to me other than having me hand Ms. Foulkes' purse to her while I was inside the vehicle, and then asking me to exit. Prior to my arrest, Officer Szczepanski did not handle any of my identifications, or my belongings. Only Sgt. Farrell did this. Moreover, all radio communications prior to my arrest were done by Sgt. Farrell.

13. Sgt. Farrell was already on the scene while I was still in Ms. Foulkes car, and before I handed the purse to Officer Szczepanski. He made all the radio communications, and received all the radio communications. Officer Szczepanski was still engaged in the search of Ms. Foulkes' car at the time of my arrest, and was still inside the vehicle doing the search.

14. When Sgt. Farrell first approached me, Ms. Foulkes was already arrested, and in the back of Sgt. Farrell's police unit. He came up to me while I was outside the car and asked where I was coming from.

15. I told him: "Lakeland"
He asked ifI had any identification.
I told him I did -- it was in my bag (a backpack type bag).

He took the bag, and asked me if he could look inside it, and I said "OK"
I told him my drivers license was in my "clutch" inside the bag.
He opened the clutch, and took out my Florida Driver's License.
He then radio'd in my name and driver license number
He then started looking through my backpack bag
He took out my prescription medication bottles, and lined them up on the trunk of Ms. Foulkes' vehicle.
He then took a quick look through my hospital records from the motorcyole accident which I had in the backpack bag in an open folder.
He asked me what the prescription bottles were for, and if they were mine.
I told kim they were mine, that I just got out of the hospital, and had had a motorcycle accident.

16. Sgt. Farrell then put my medical records, the prescriptions, and my clutch back into the backpack bag, leaving everything on the trunk of the vehicle.

17. I then heard a female voice come over the radio saying: my name, my address, and then "no wants or warrants"

18. My clutch, which is a black zippered case with brown trim, approximately 8" x 10", contained a number of identifications, many in plastic windows. The identifications in the clutch included:

Fla. Driver License application
Florida Drivers License

two Florida. Hunting/Fishing Licenses --- (showing Weight of 207 and 223 lbs)
daily diary
Social Security Card
Chilis Frequent Diner card
Orange County Library Card
Birth certificate
Various business cards of others, photos, religious card, etc.
Kash n' Karry Preferred Customer Card
Pepsi License to Chill card
First Union Visa card
Blockbuster Video card
Gooding's Family Video Store card
Veteran's Administration Patient Data Card
Armed Forces Discharge Papers (copy)
Letter from Bank (First Union) of overdraw to "Joe J. Rodriguez"
U-Haul contract with Joe Rodriguez
Master Card receipt

19. Sgt. Farrell then walked away from me, and said something into his radio. I waited, and about one to two miuutes later he approached me, and asked me how tall I was. I said 5'11". He said, hewas that height, and I couldn't be 5'11". I pointed out to him that he was standing on an incline, and that's why he may have seemed taller. He then asked if I had any tatoos. I said yes. He asked asked "how many". I said "six". He said: "do you have four". I again said I had six. He said, "but do you have four?" I said: "in order to have six, you have to have four." Sgt. Farrell then asked where they were.

20. I took my left hand, and touched my right bicep, saying: "I have one here", and then I took my right hand, and touched my left bicep, and said "I have one here". At that point, without warning, Sgt. Farrell grabbed my left arm from behind me, and twisted it up behind me against my shoulder blade. I immediately fell to my knees in pain, and yelled in pain asking him "what are you doing?", and repeatedly told him to "stop", "wait a minute" and that he was "hurting me".

21. He said: "Stop resisting". I replied, I wasn't resisting-- and that he was hurting me. At the same time I was saying this, he was pulling my right hand behind me, and handcuffed me. He then pulled me up by.the arm.

22. I was continuing to yell that he was "hurting me", and grimacing in pain. He then said: "We've got you, Victor Herrara", and told me they had 3 warrants on me from St. John's County. I asked where St. John's County was, and he said it's in St. Augustine. I said I'd only been to St. Augustine once in.my life, not too long ago. I also asked him: "who's Victor Herrara?" He said: "You're Victor Herrara, using the alias of Joe Rodriguez". I said: "You're making a big mistake. I'm not Victor Herrara." He then said: "You're Victor Herrara, today, buddy."

23. I continued to complain that he was making a mistake, and asked him to check out my fingerprints or compare me to this Victor Herrara's mug shot. He said he would do that "at the station". I continued to groan in pain, and Sgt. Farrell then placed me,

handcuffed behind my back, into the same unit as Patricia Foulkes. We were both in the back seat together. I continued groaning. Sgt. Farrell ignored my pain, and distress.

24. Sgt. Farrell then went back to Ms. Foulkes' car where Officer Szczepanski was located, and had a discussion with Officer Szezepanski, and another man who was not in uniform who had been riding in Officer Szczepanski's unit.

25. After their discussion, Sgt. Farrell placed my bag into the trunk of Ms. Foulkes vehicle, returned to his patrol unit, and got in. I was still groaning in pain. He didn't ask me why I was groaning, or why I was in pain. I told him I needed my bag, because I needed to take my medication. He said "don't worry, we'll get your bag", and then drove us to the police station which was only a few blocks away.

26. When we got to the police station I was still groaning in pain as I exited the vehicle. The only officer involved in our custody at the time was Sgt. Farrell. I did not see Officer Szczepanski. I asked for my bag, and told him I "needed my medication", and it had to come with me. I told him I had to take my anti-biotics, and pain medication. He again told me not to worry about the bag, and that the other officer was bringing it. Ms. Foulkes and I were then brought into the station, and I was taken to a holding ceil. My handcuffs were temporarily removed. I continued to complain about pain, and told Sgt. Farrell that I was in "real bad pain". I also told him he was making a "big

mistake", and asked if he could please check the fingerprints and mug shot of Herrera. He again told me not to worry, and that he would "check it out".

27. At that point Officer Szczepanski, and the other gentleman arrived, and she placed Ms. Foulkes into a holding cell.

28. Nobody ever looked at my tatoos at any time. Nobody asked me to describe them. Other them the positions of the two tatoos on my biceps that I pointed to-nobody ever asked the location of the other tatoos. Sgt. Farrell never gave me any indication he was going to arrest me before grabbing my left arm, and never told me I was under arrest at any time, although it was obvious once he handcuffed me.

29. While in the holding cell I continued to protest that there was a mistake, and asked for a fingerprint and mug shot comparison to the only person in the area--the man who had been with Officer Szczepanski at the scene. I did not see either Sgt. Farrell or Officer Szczepanski again.

30. The next person I saw after this was the officer who transported me to the jail.

FURTHER THE AFFIANT SAYETH NOT

/s/_____
Joe John Rodriguez

SWORN TO and Subscribed before me, the undersigned authority this 2nd day of August, 1999.

/s/_____
Tracy R. Duncan
Notary Public
My Commission expires February 27, 2001

APPENDIX F

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 98-997-CV-19A

JOE JOHN RODRIGUEZ,
Plaintiff,

v.

CITY OF WINTER PARK, a municipal corporation, DOUGLAS M. BALL, WAYNE W. FARRELL, and LOIS SZCZEPANSKI,
Defendants.

AFFIDAVIT OF WAYNE W. FARRELL

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME, the undersigned authority, this day personally appeared the Affiant, WAYNE W. FARRELL, who after being first duly sworn, deposes and says:

1. That my name is Wayne W. Farrell. I am over 18 years of age, of legal capacity to testify, and have personal

knowledge of the pertinent facts contained herein.

2. That I am a sergeant employed by the City of Winter Park, Florida Police Department. I have been employed full time by the City of Winter Park Police Department since January, 1986. On September 8, 1995, when the arrest of Plaintiff, JOE JOHN RODRIGUEZ, occurred, I had attained the rank of sergeant. My actions in connection with the arrest of JOE JOHN RODRIGUEZ occurred within the course and scope of my employment as a police officer with the City of Winter Park.

3. That in the early morning hours of September 8, 1995, I served in a backup capacity to Officer Lorri Szczepanski, in connection with a motor vehicle traffic stop (involving a vehicle driven by Patricia Foulkes, in which Joe Rodriguez was a passenger) that took place in Winter Park, Florida. I was not involved in the initial stop of the Foulkes' vehicle, but arrived at the scene later. Mr.Rodriguez was properly questioned due to lfis presence at the scene of a drug related arrest and his possible connection to the drugs. Mr. Rodriguez voluntarily spoke with us.

4. That I assisted Ofc. Szczepanski and conferred with Ofc. Szczepanski in connection with this arrest. The arrest of Joe Rodriguez was made under the authority of Ofc. Szczepanski.

5. That the individual who occupied the Foulkes' Vehicle identified himself as Joe Rodriguez. We were advised by the dispatcher, who had access to teletype information provided by the St..Johns County Sheriff's Department, that there was a warrant outstanding for Victor Heredia who used an aka or

alias of Joe Rodriguez. The following information was available, or became available, in connection with the description or characteristics of Victor Heredia aka Joe Rodriguez and the individual named Joe Jolm Rodriguez who is the Plaintiff in this ease. That information is contained on the following chart:

Victor Heredia a/k/a Joe Rodriguez

Name:	Victor Manuel Heredia a/k/a/ Joe Rodriguez
Sex:	Male
Race:	White (Hispanic)
Date/Birth:	6/24/53, 7/2/53 6/23/53 (multiple)
Place/Birth:	New York
SSN:	112-42-9808, 112-42-5808 and 112-43-9809 (multiple)
Height:	5'6"
Weight:	139
Hair Color:	Brown
Eye Color:	Green
Tatoos:	4 (various areas)
Eyeglasses:	Yes
Residence:	St. Augustine, FL
Type/Offense	Traffic (vehicle)/drugs

Plaintiff, Joe John Rodriguez		Similarities
Name:	Joe John Rodriguez	x
Sex:	Male	x
Race:	White (Hispanic)	x
Date/Birth:	3/23/53	x
Place/Birth:	New York	x
SSN:	115-42-5388	x

Height:	5'11"	
Weight:	I recall Plaintiff as relatively slender but have no specific estimate of his weight	x
Hair Color:	Dark Brown	x
Eye Color:	Dark Brown	
Tatoos:	6 (various areas)	x
Eyeglasses:	No recollection. It is my understanding that he has glasses but does not always wear them	x
Residence:	Apopka, FL (although indicated he had been in St. Augustine	x
Type/Offense	Driver of vehicle in which he was occupant arrested on drug charge	x

Although it was not my decision to arrest Joe Rodriguez, I concurred in the decision to arrest him. In my view, there was arguable probable cause, and actual probable cause, under all the circumstances that existed at the time, to support this arrest. There are a number of identical or substantially similar features, characteristics or other information between Victor Heredia aka Joe Rodriquez, on one hand, and Joe Rodriguez, the Plaintiff in this case, on the other hand. The chart contains an "x" to mark those features or other information. As noted, the identical or similar characteristics include name, gender, ethnic background, place of birth, date of birth (same year), Social Security number, hair color, and contact with venue of the warrant. Also, Victor Heredia aka Joe Rodriguez was wanted on a drug related charge, and the Joe Rodriguez standing before me was the occupant of a vehicle the driver of wlieh had just been arrested on a drug related charge. Any

differences between the identifying information relating to these two individuals were either minor or inconsequential in nature or, in the overall context of matters, would not change the determination of probable cause. It is common for there to be some differences in identifying information and in my experience the officer must make a determination of probable caused based upon the totality of circumstances. The decision concerning the arrest needed to be made, "on the street", in the early hours of the morning. Based upon all of the information then reasonably available, I believed, and still believe, that there was arguable and actual probable cause for the arrest of Joe Rodriguez. The decision to arrest Joe Rodriguez was clearly an appropriate decision properly within the discretion of the law enforcement officer on the scene.

6. Mr. Rodriguez has claimed that he had sufficient additional identification, above and beyond a Florida driver's license, to establish his identity as Joe Rodriguez, and not Victor Heredia. I do not recall all of this documentation being present, but I have reviewed the alleged documentation. In my view, as an experienced law enforcement officer, the identification in question is not of great significance and does not alter the determination that arguable and actual probable cause existed for the arrest of Mr. Rodriguez. The identification in question constituted forms of"identification" that are not reasonably considered to be valid and reliable identification (such as video store identification cards, grocery store cards, dinner discount cards, fishing license etc.) and, furthermore, the existence of multiple pieces of identification, in the name of an alias (in this case Joe Rodriguez) does not establish the true identity of an individual. In fact, in my experience, an individual using an alias may actually collect a number of pieces of "identification" using the alias in order

to establish his or her new "identity".

7. I am 6 feet tall. It appears to me that Mr. Rodriguez was shorter than me, probably by several inches. That was my impression at the time.

8. That as indicated, a determination was made that there was probable cause, based on the information then reasonably available to arrest Joe Rodriguez. Once probable cause existed, the decision to arrest Mr. Rodriguez was within the lawful discretion of the officer at the scene. Other agencies or parts of the judicial administration system may be involved in resolving questions concerning identity. It is my experience, though, that the officer at the scene, with the resources available to that officer at the time, must make a determination concerning probable cause, and the ultimate validity of that determination will be tested at a later time. We were not in a position to make any further determination concerning the identity of Mr. Rodriguez, but, rather, made a decision based upon information reasonably available at that time.

9. That I was the law enforcement officer who actually placed handcuffs on Joe Rodriguez. Ofc. Szczepanski was not involved in handcuffing him. I handcuffed Mr. Rodriguez, with his hands behind him, pursuant to Department policy, and in order to minimize any risk of harm to an officer or the public. Prior to commencing to handcuff Mr. Rodriguez, he made no mention of any injury to his elbow or arm or any problem in that regard. I did not notice any sling bandage or similar device on or supporting his arm or elbow. As I was in the process of putting Mr. Rodriguez's left arm behind his back, he stated that his arm had been injured and that I should be careful. He never asked that he not be handcuffed or that

he be handcuffed with his hands in front of him. As I was putting his wrists behind him, in a routine manner, Mr. Rodriguez said "Oh," but never yelled or moaned in pain. He never asked that the handcuffs be removed or that he be handcuffed in any other manner. He never indicated that he was in need of any medical attention. I placed and secured his hands behind his back in a routine fashion and in a normal handcuffed position. I never jerked or forced Mr. Rodriguez's wrists towards his upper back or shoulder. I never forced Mr. Rodriguez to the ground. Mr. Rodriguez's legs or knees never buckled and he never fell to the ground. Quite simply, the handcuffing of Mr. Rodriguez was fairly routine. He asked me to be careful, I was careful, and he never asked me to stop handcuffing him, release him from the handcuffs, or handcuff him with his hands in front of him.

10. That I believe that all of my actions in connection with Joe Rodriguez, relating to questions concerning his identification and relating to the handcuffing of the arrestee, were proper and objectively reasonable under all the circumstances. I believed then and believe now that all of my actions were fully consistent with clearly established law. At the time of the arrest of Mr. Rodriguez, I had every reason to believe that his arrest, and the method by which he was handcuffed, was lawful in all respects. I acted in good faith and within my proper and lawful discretion as a law enforcement officer.

FURTHER AFFIANT SAYETH NAUGHT.

STATE OF OHIO
COUNTY OF ORANGE

BEFORE ME, the undersigned, duly authorized to take acknowledgments in the State and County aforesaid, personally appeared WAYNE W. FARRELL, personally known to me to be the person designated in the foregoing, or who has produced a driver's license as identification, and who acknowledged before me that he executed the same freely and voluntarily for the purposes described therein.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 6th DAY OF MARCH, 2000.

s/s_____
Angela C. Garcia